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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 24th May 2012

No. 4128—IR (ID)-128/2010-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th April 2012 in I. D. Case No. 99 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s NEM Engineering Project Pvt. Ltd., a Contractor establishment of M/s Brahmani River Pallet Ltd., Sarangpur, Jajpur and their workman Shri Jayanta Kumar Das was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 99 OF 2010

Dated the 9th April 2012

### *Present :*

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal, Bhubaneswar.

### *Between :*

The Managing Director,  
M/s NEM Engineering Project Pvt. Ltd.,  
B-21, B.J.B. Nagar, Bhubaneswar.

.. First Party—Managements

M/s NEM Engineering Project Pvt. Ltd.,  
H. No. 55-15-06, Housing Board Colony,  
Krishna College Road,  
Visakhapatnam-530022.

And

Shri Jayanta Kumar Das,  
C/o. Haramani Das,  
At Baruadi, P.O. Devidwar,  
Dist. Jajpur.

.. Second Party—Workman

*Appearances :*

Shri Pradyumna Ku. Panda, Manager (H.R. & Admn.).	.. For First Party— Managements
Shri Jayanta Ku. Das	.. Second Party— Workman himself

**AWARD**

The Government of Odisha in the Labour & Employment Department (presently the Labour & E.S.I. Department) in exercise of powers conferred upon them by sub-section (5) of Section 12, read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) for short the Act have referred the following dispute for adjudication vide their Order No. 10661—ID-128/2010-LE., dated the 20th December 2010 :—

“Whether the action of the management of M/s NEM Engineering Projects Pvt. Ltd., in denying employment to Shri Jayanta Kumar Das, Welder with effect from the 8th August 2009 is justified ? If not, to what relief the workman entitled ?”

2. There is no dispute between the parties to the extent that M/s NEM Engineering Projects (first party No. 1) is a Contractor under M/s Brahmani River Pallets Ltd. (first party No. 2) and that with effect from the 17th January 2008 the second party had been working under M/s NEM Engineering Projects on daily wage basis.

Further case of the second party is that though he had worked continuously for more than a year, his service was terminated with effect from the 8th August 2009 without complying with the provisions of Section 25-N of the Act. That apart, his employer also violated the provisions contained in Section 25-H of the Act by recruiting another workman to work in his place.

3. According to the employer (first party No. 1), the second party was found to have committed gross indiscipline. So, he was served with a notice, Dt. 30-6-2009 asking him to explain on the alleged misconduct. The second party did not bother to submit his explanation. Instead of submitting any explanation he continued to remain absent from duties till he raised the dispute before the Local Labour Officer and even thereafter. Another notice, Dt. 23-7-2009 was served on the second party asking him to join in duties but he did not respond.

It is further contended that the second party had not yet completed 240 days of work for which compliance of the provisions of Section 25-N of the Act was not necessary. It is further asserted that the second party being a contract labour the provisions of the Contract Labour (Regulation & Abolition) Act, 1970 and the Rules framed thereunder are applicable to him and the provisions of the Industrial Disputes Act, 1947 are not applicable in this case.

4. In terms of the reference the following issues have been settled :—

**ISSUES**

- (i) “Whether the action of the management of M/s NEM Engineering Projects Pvt. Ltd., in denying employment to Shri Jayanta Kumar Das, Welder with effect from the 8th August 2009 is justified ?
- (ii) If not, to what relief the workman is entitled ?”

5. The workman has examined himself as W.W. No. 1 and exhibited documents marked Exts. 1 to 3 series. On the other hand, the first party No. 1 has examined its Manager (H.R. & Admn.) as its sole witness (M.W. No. 1) and has exhibited documents marked Exts. A to D.

#### FINDINGS

6. *Issue No. (i)*—According to the second party, his service was terminated with effect from the 8th August 2009. But, according to the management the service of the second party was terminated with effect from the 1st August 2009. During conciliation proceeding the workman had asserted that he was refused employment with effect from 8th August 2009. As per the terms of the reference the date of termination of service of the workman by way of denial of employment is 8-8-2009. The management has not exhibited any order of termination to support its claim that the service of the workman was terminated with effect from the 1st August 2009. Ext. D is a letter addressed to the District Labour Officer, Jajpur Road which is signed on 27-8-2009. In this letter it is stated that the workman was removed from employment with effect from the 1st August 2009. The conciliation failure report does not reflect that the management during the conciliation proceeding had taken the stand that the workman was removed from the Organisation with effect from the 1st August 2009. It also does not reflect that the management had disputed the date of termination of employment as asserted by the workman during the conciliation proceeding. Therefore, it is to be presumed that the date of termination of service of the workman is 8-8-2009.

7. Ext. D reflects that the workman was separated from the Organisation of first party No. 1. So, refusal of employment is not disputed by the employer. However, an attempt has been made to justify such refusal by taking the ground that the workman used to absent from duties without prior intimation to his superiors which is a gross indiscipline on the part of the workman for which he was called upon to explain the reasons of such indiscipline but the workman did not bother to give any explanation and even continued to remain absent from his duties. In this regard the management has proved Exts. A. and B. Ext. A is a notice to the workman calling upon him to show cause as to why his service should not be terminated on or before 2-7-2009 on the ground of his regular absence from duty without prior intimation. According to the management, the workman did not submit any explanation to this notice. Yet, the management did not terminate his service with effect from the 2nd July 2009. Therefore, it is to be presumed that the management did not intend to act in terms of the notice marked Ext. A. Ext. B is another notice, Dt. 23-7-2009 calling upon the workman to resume duties within seven days from the date of issue of the notice failing which his name would be struck off the Roll. In the same letter it is specifically stated that the workman had been remaining absent since 27-6-2009. It appears, this notice was sent to the workman by registered post but the postal letter could not be delivered to the workman and the letter was returned to the management with the postal endorsement that the addressee refused to accept the same. It further appears that basing on the notice marked Ext. B the management takes the stand that when the workman did not report for duty within seven days from the date of issue of the notice he was removed from employment presuming that he had no interest to work. The alternative plea taken by the management is that as per the provisions of the Contract Labour (Regulation & Abolition) Act and the Rules framed thereunder the services of the second party stood automatically terminated.

8. The workman says that the notice (Ext. B) which was sent by registered post was not offered to him and that he had not refused to accept the same. From the postal endorsement there

may be a presumption that the workman refused to receive the notice. Therefore, it may be examined as to whether the workman's failure to report for duty in compliance with the notice, Ext. B justifies the management's action.

As per Rule 12 (1) of the Odisha Contract Labour (Regulation & Abolition) (Conditions of Service) Rules, 1975 (for short, the Conditions of Service Rules), no contractor shall without reasonable cause, terminate the services of a workman, who has been in his employment continuously for a period of thirty days or more without giving such workman at least three day's notice in writing or wages in lieu thereof except for acts of misconduct. Admittedly, the workman was under the employment of the first party No. 1 continuously for a period of more than thirty days. But, the first party No. 1 does not claim that it has complied with the conditions of 12 (1) of the said Rules. Though it is asserted by the management that the workman was regularly remaining absent from his duties without intimating his superiors which is a gross indiscipline it has not claimed to have initiated any disciplinary proceeding against the workman. As per sub-rule (4) of Rule 12 of the conditions of Service Rules, no order of punishment for misconduct shall be made except after holding a domestic enquiry against the workman following the principles of natural justice. The management contends that the workman was separated from the Organisation of the first party No. 1 with effect from the 1st August 2009 as he did not resume duties after the notice marked Ext. B was served on him. Admittedly, no domestic enquiry has been held against the workman. So, it may be presumed that it is not a case of termination of service of the workman as a measure of punishment.

Though specifically not pleaded by the first party No. 1, the management seems to have terminated the workman's service taking recourse to sub-rule (5) of Rule 12 of the Conditions of Service Rules, which reads as follows :

“If a workman absents himself for more than 5 continuous working days without leave application of making a representation to the contractor and without sufficient cause, his service shall be liable for termination without notice.”

On behalf of the management it is argued that immediately preceding the disputed termination of service the workman had remained unauthorisedly absent for a period of more than one month. In this regard attention has been drawn to the workman's Attendance Card for the month of June, 2009 and April, 2009 marked Exts. C/11 and C/12. It is found from the entries made in these Attendance Cards that from 27-6-2009 till the end of July 2009 the workman had not worked even for a single day which implies that he had absented from his duty during the said period. The workman has not pleaded in his claim statement as to why he remained absent during this period. The management has specifically pleaded that the notice, Dt. 30-6-2009 (Ext. A) was served on the workman asking him to show-cause as to why he should not be terminated from service on the ground of regular absence from duty. This notice has been received by the workman. The workman has not shown to have submitted any show-cause in reply to the said notice. Thereafter, the management sent another notice (Ext. B) to the workman by registered post which was refused to be accepted by the workman. In that notice the workman was invited to report for duty. It is the case of the workman that the management illegally terminated his service with effect from the 8th August 2009. It is not clarified by the workman as to whether he had been regularly attending to his duties till the date of his retrenchment, i.e. 8-8-2009. From the Attendance Cards it is found that the

workman had been remaining absent from duties since 27-6-2009. Though an opportunity was given to the workman, he did not give any explanation showing that for sufficient cause he could not attend to his duties during the said period. The period of absence of the workman is for more than five continuous working days. There is no pleading that the workman had applied for leave or made any representation to the Contractor regarding his continuous absence. Therefore, in terms of sub-rule (5) of Rule 12 of the Conditions of Service Rules, 1975 the service of the workman is liable for termination without any notice. Therefore, the management is justified in terminating the services of the workman without any notice.

9. From the discussions made above it is also found that when the workman absented from duties for a long period a notice was served on him asking him to show-cause to which he did not respond and thereafter a notice was sent to him by registered post calling upon him to resume duties but the workman refused to accept the same. Under such circumstances a valid presumption can be raised to the effect that the workman had voluntarily abandoned his Job. Therefore, the retrenchment without compliance of any mandatory provisions contained in the Act is neither illegal nor unjustified.

*Issue No. (i)* is, therefore, answered against the second party.

10. *Issue No. (ii)*—In view of the discussions made under *Issue No. (i)*, the second party is not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
9-4-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
9-4-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor  
M. R. CHOUDHURY  
Under-Secretary to Government